

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 United States of America,

Case No.: 2:17-cr-00001-JAD-DJA-1

4 Plaintiff

5 v.

**Order Denying Motion for
Release to Home Confinement**

6 Lucas Coelho Paiva Rego,

[ECF No. 697]

7 Defendant

8 Defendant Lucas Coelho Paiva Rego asks this court to allow him to serve the remainder
9 of his 54-month sentence in home confinement in Brazil because releasing him from prison will
10 give him a better chance to avoid the Coronavirus.¹ I deny the motion because Rego has not
11 shown that release to home confinement is available or warranted.

12 **Background**

13 In 2018, Rego pled guilty without a written plea agreement to Use or Trafficking in
14 Unauthorized Access Devices and Aggravated Identity Theft.² In his plea agreement and at his
15 plea hearing, Rego admitted that he was part of a sophisticated, multi-million-dollar, credit-card
16 and ATM-card fraud ring from Brazil that lasted over a year. He was sentenced to 54 months in
17 custody followed by 3 years of supervision.³ He did not appeal. He is currently serving his
18 sentence at the D. Ray James Correctional Institution and the Bureau of Prisons (BOP) website
19 reflects a November 2020 release date for Rego.⁴

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21 _____
22 ¹ ECF No. 697 (motion).

23 ² ECF No. 276 (plea agreement).

³ ECF No. 640 (amended judgment).

⁴ https://www.bop.gov/mobile/find_inmate/index.jsp#inmate_results (last visited July 10, 2020).

1 In a pro se motion, Rego asks this court to release him to home confinement in Brazil for
 2 the remainder of his sentence.⁵ The government opposes that motion, noting that the authority to
 3 designate an inmate to home release rests exclusively with the BOP, not the court; even if this
 4 court could grant home confinement, it couldn't send Rego to Brazil for it; and to the extent that
 5 Rego is seeking compassionate release, he has not demonstrated that such relief is available or
 6 warranted.⁶

7 Discussion

8 A sentencing court's ability to modify or reduce a sentence once imposed is seriously
 9 limited.⁷ The compassionate-release provision of 18 U.S.C. § 3582(c)(1)(A)(i), as amended by
 10 the First Step Act of 2018,⁸ is an exception to this limitation. It allows the sentencing judge to
 11 reduce a sentence based on "extraordinary and compelling reasons" after the defendant has failed
 12 to get the BOP to bring such a motion on his behalf.⁹ The court may entertain an inmate's
 13 request for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) only (1) "after [he] has
 14 fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a
 15 motion" on his behalf or (2) after "the lapse of 30 days from the receipt of such a request by the
 16 warden of the defendant's facility, whichever is earlier."¹⁰ This exhaustion requirement is
 17 mandatory, and an inmate's failure to satisfy it is "a glaring roadblock foreclosing compassionate
 18

19 ⁵ ECF No. 697. The Federal Public Defender's Office declined to supplement Rego's pro se
 20 motion. See ECF No. 699.

21 ⁶ ECF No. 701.

22 ⁷ See *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003) (exploring Federal Rules of
 23 Criminal Procedure 35 and 36); 18 U.S.C. § 3582(c).

⁸ The First Step Act of 2018, Pub. L. 115-391, § 603(b), 132 Stat. 5194, 5239 (Dec. 21, 2018).

⁹ 18 U.S.C. § 3582(c)(1)(A)(i).

¹⁰ *Id.*

1 release”¹¹ Because Rego has not demonstrated that he exhausted his administrative rights
 2 before filing this motion, it must be denied for failure to exhaust.

3 Even if Rego had properly exhausted the administrative process before filing this motion,
 4 however, I would deny it for the separate and independent reason that the record does not
 5 demonstrate that his compassionate release is warranted. Rego’s reasons for wanting release are
 6 neither extraordinary nor compelling. Although the COVID-19 pandemic is undeniably grave
 7 and its impacts on every aspect of American life are unprecedented, Rego does not argue that it
 8 has reached the inmate population at his facility, and the BOP has implemented a detailed
 9 COVID-19 response plan for federal inmates.¹² Rego does not claim that he has a physical or
 10 medical condition that renders him particularly susceptible to the virus or its effects, and his
 11 presentence report reflects that he is a 28-year-old young man “in good physical health.”¹³
 12 Indeed, his stated reason for desiring home confinement is that he would prefer to be with his
 13 daughter and parents in Brazil. Simply put, the concerns that Rego has identified fall far short of
 14 the extraordinary or compelling ones needed to justify compassionate release.¹⁴

17 ¹¹ *U.S. v. Raia*, 954 F.3d 594 (3d Cir., 2020) (holding that failure to comply with
 18 § 3582(c)(1)(A)’s exhaustion requirement bars relief). *See also* my extensive analysis of the
 19 exhaustion issue in *United States v. Johnson*, No. 2:12-cr-00336-JAD-CWH, 2020 WL 2430936,
 at *2 (D. Nev. May 12, 2020), incorporated herein as set forth in full.

20 ¹² https://www.bop.gov/coronavirus/covid19_status.jsp (last visited July 10, 2020).


¹³ PSR at ¶ 69.

¹⁴ To the extent that Rego is asking this court to move him to home confinement for reasons
 21 other than compassionate release, this court lacks the power to do so. Decisions about where an
 22 inmate in BOP custody serves his sentence are vested exclusively in the BOP. *See* 18 U.S.C.
 23 §§ 3621(b), 3624. Even if this court were to effectuate the spirit of Rego’s request by granting
 him early release and modifying the terms of his supervised release by adding a home-
 confinement condition, that home confinement wouldn’t be in Brazil because the U.S. Probation
 Office wouldn’t have jurisdiction to supervise Rego in Brazil.

Conclusion

IT IS THEREFORE ORDERED that Defendant Lucas Coelho Paiva Rego's Motion for Compassionate Release **[ECF No. 697]** is **DENIED**.

Dated: July 10, 2020



U.S. District Judge Jennifer A. Dorsey